

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

IN THE MATTER OF

CAYUGA COUNTY GROUNDWATER  
CONTAMINATION SUPERFUND SITE

General Electric Company,

Respondent,

Proceeding under Sections 106(a)  
and 122 of the Comprehensive  
Environmental Response,  
Compensation, and Liability Act  
of 1980, as amended, 42 U.S.C.  
§§ 9606(a) and 9622.

Index Number  
CERCLA-02-2012-2023

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT  
FOR A REMOVAL ACTION

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (the "Settlement Agreement") is entered into voluntarily by the General Electric Company ("Respondent") and the United States Environmental Protection Agency ("EPA") and requires Respondent to perform a removal action and pay certain response costs in connection with the Cayuga County Groundwater Contamination Superfund Site, defined below, located in Cayuga County, New York.

2. The Settlement Agreement is issued to Respondent by EPA pursuant to the authority vested in the President of the United States under Section 106(a) and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9622(a), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 Fed. Reg. 2926, January 29, 1987). This authority was further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-C and 14-14-D and re-delegated within Region II to the Director of the Emergency

located at 2181 West Genesee Street, Town of Aurelius, Cayuga County, New York.

i. "Waste" means (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents noted in (1), (2), or (3) above.

j. "Work" means all work and other activities that Respondent is required to perform pursuant to this Settlement Agreement.

#### IV. EPA'S FINDINGS OF FACT AND EPA'S CONCLUSIONS OF LAW

7. Between 1951 and 1986, the General Electric Company ("GE" or "Respondent") owned and operated a manufacturing facility (the "Powerex Facility") located at 2181 West Genesee Street in the Town of Aurelius on the border of the City of Auburn, Cayuga County, New York. During the time of GE's ownership a variety of electrical components including radar equipment, printed circuit boards for high-fidelity equipment and high-voltage semi-conductors were manufactured at the Powerex Facility. Between 1986 and 1990, Powerex, Inc. ("Powerex"), a joint venture corporation formed by Westinghouse Electric Corporation, Mitsubishi Electric America, Inc. and GE, acquired the facility and continued the manufacture of high-voltage semiconductors. The Powerex Facility was reacquired by GE in 1990, and GE currently owns the property.

8. During GE's manufacturing operations at the Powerex Facility, solvents were disposed of therein, which resulted in a release into the environment. The release of solvents resulted in elevated levels of volatile organic compounds ("VOCs") such as trichloroethylene ("TCE") and TCE degradation products such as cis-1,2-dichloroethylene ("cis-1,2-DCE") and vinyl chloride being detected in the groundwater.

9. In 1985, during routine testing of the Village of Union Springs' municipal drinking water distribution system, low levels of cis-1,2-DCE were detected. Routine testing of two Union Springs public supply wells beginning in late 1988

detected low levels of cis-1,2-DCE and often trace levels of TCE.

10. Ultimately, the New York State Department of Environmental Conservation ("NYSDEC") and the Cayuga County Department of Health conducted investigations in 1999, 2000 and 2001 that included the sampling of over 300 residential wells at and near the Site. This investigation indicated that 51 residential drinking water wells were contaminated with vinyl chloride, cis-1,2-DCE and/or TCE above federal maximum contaminant levels ("MCLs") of 2 parts per billion ("ppb"), 70 ppb, and 5 ppb, respectively. In addition, 24 of the wells were shown to be contaminated above EPA's removal action levels for vinyl chloride and cis-1,2-DCE of 2 ppb and 400 ppb, respectively.

11. The Site was referred to EPA by NYSDEC on December 4, 2000 for a CERCLA response action.

12. EPA responded by initiating a removal action between December 8, 2000 and March 16, 2001, which included providing bottled water to affected residences and installing 55 point of entry treatment ("POET") systems to treat affected residential and/or agricultural wells. All but two of the POET systems involved carbon adsorption treatment. POET systems using air-stripper treatment were installed on wells at two large dairy farms in the affected area. Authority for the removal action was confirmed in an action memorandum dated May 21, 2001. The duration and cost increase for this work was extended in an action memorandum dated March 15, 2005.

13. Subsequent to the installation of the POET systems, the Cayuga County Water and Sewer Authority installed public water systems to supply potable public water to the affected residents. At the current time, all but one of the residences which received POET systems from EPA to treat well water have been connected to the public water supply.

14. Three farms and the one residence which have not been connected to public water are hereinafter referred to as, "The Four Properties." One farm, located at 1877 State Route 326, Aurelius, New York, still has a POET air-stripper on its well to treat contaminated well water. A second farm, located at 1939 Dougall Road, Fleming, New York, had a POET air-stripper on its well but a recent inspection by EPA revealed it had been removed by the property owner without notice to EPA. A third farm,

located at 5389 Lockwood Road, Springport, New York, has a carbon adsorption POET system treating the well water. The one residence located at 4982 Davis Road in Springport, New York, has a carbon adsorption POET system treating the well water.

15. On September 5, 2002, the Site was listed on the National Priorities List ("NPL") and since that time, EPA has been conducting a remedial investigation/feasibility study ("RI/FS") to determine the nature and extent of the groundwater contamination and to evaluate alternatives to remediate the contamination. The RI/FS is in the final stages of completion.

16. At the current time, GE is operating an active VOC treatment system in the shallow bedrock at the Powerex Facility pursuant to an Interim Action Record of Decision under a State Order on Consent with the NYSDEC. GE is also undertaking an RI/FS under State law at the Powerex Facility and has implemented other response actions approved by the NYSDEC. GE has submitted its RI Report to the NYSDEC.

17. The Powerex Facility is hydraulically up-gradient from the area of contamination in the bedrock aquifer which EPA is studying as part of the Site RI/FS. Cis- 1,2-DCE, TCE and vinyl chloride contamination has been detected in groundwater sampling in the deep aquifer zone at levels as high as 473,000 ppb of TCE, 42,700 ppb of cis-1,2-DCE, and 2970 ppb of vinyl chloride at the periphery of the Powerex Facility. In addition, EPA has collected hydrogeological data linking the groundwater contamination at the Powerex Facility to the groundwater contamination at the Site. Accordingly, EPA has determined that the Powerex Facility is a source of the groundwater contamination at the Site. By letter dated March 30, 2011, EPA notified GE that it was considered to be a potentially responsible party at the Site.

18. TCE, cis-1,2-DCE and vinyl chloride are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

19. The Site includes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

20. The presence of high levels of cis-1,2-DCE, TCE and vinyl chloride in the groundwater at the Site constitutes a "release" or threat of "release" of hazardous substances into the

environment, as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

21. Exposure to the various hazardous substances detected at the Site can cause a variety of adverse health effects.

22. Respondent GE, a corporation organized in New York, owns and operated a facility at and from which there was a release of hazardous substances.

23. Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

24. Respondent owns and operated a facility at which hazardous substances were disposed of which came to be located at the Site. Respondent is thus a responsible party within the meaning of Sections 107(a)(1) and (a)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (a)(2).

25. Respondent has been given the opportunity to discuss with EPA the basis for issuance of this Settlement Agreement and its terms.

#### V. EPA'S DETERMINATIONS

26. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). These factors include, but are not limited to, the following conditions:

- a. actual or potential contamination of drinking water supplies or sensitive ecosystems; and
- b. the unavailability of other appropriate federal or state response mechanisms to respond to the release.

27. EPA has determined that a removal action at this Site is necessary to address the release or threat of release of hazardous substances or pollutants or contaminants in the groundwater at the Site.

28. The actions required by this Settlement Agreement are necessary to protect the public health or welfare or the

environment, are in the public interest, and, if carried out in compliance with the terms of this Settlement Agreement, will be considered to be consistent with the NCP.

29. Based upon the EPA's Findings of Fact and EPA's Conclusions of Law set forth above, and the administrative record supporting this removal action, EPA has determined that the actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and it is hereby agreed and ordered that Respondent shall undertake a removal action at the Site, as set forth in Section VII (Work To Be Performed), below.

#### VII. WORK TO BE PERFORMED

##### A. Designation Of Contractor and Designated Project Coordinator

30. Respondent has selected, and EPA has approved the selection of Paul Hare, as the Project Coordinator for Respondent. The Project Coordinator shall be responsible on behalf of Respondent for oversight of the implementation of this Settlement Agreement. Respondent shall ensure that all Work requiring certification by a professional engineer licensed in the State shall be reviewed and certified by such. The Project Coordinator shall be knowledgeable at all times about all matters relating to the Work being performed under this Settlement Agreement.

31. Respondent may change its Project Coordinator provided that EPA has received written notice at least seven (7) days prior to the desired change. All changes of the Project Coordinator shall be subject to EPA approval.

32. EPA correspondence related to this Settlement Agreement will be sent to the Project Coordinator on behalf of Respondent. To the extent possible, the Project Coordinator shall be present on-Site or readily available for EPA to contact during all working days and be retained by Respondent at all times until EPA issues a notice of completion of the Work in accordance with Paragraph 119. Notice by EPA in writing to the Project Coordinator shall be deemed notice to Respondent for all matters

relating to the Work under this Settlement Agreement and shall be deemed effective upon receipt.

33. All activities required of Respondent under the terms of this Settlement Agreement shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by Federal, State, and/or local governments consistent with Section 121 of CERCLA, 42 U.S.C. § 9621, and all Work conducted pursuant to this Settlement Agreement shall be performed in accordance with prevailing professional standards.

34. Respondent shall retain at least one contractor to perform the Work. Respondent has proposed and EPA has approved the use of ARCADIS U.S., Inc. as the contractor for the Work to be performed under this Settlement Agreement. Respondent shall notify EPA of the name and qualifications of any other contractor within ten (10) days of the proposed replacement of ARCADIS U.S., Inc. Respondent shall also notify EPA of the name and qualifications of any other subcontractor(s) proposed to perform Work under this Settlement Agreement at least ten (10) days prior to commencement of such Work.

35. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors proposed by Respondent to conduct the Work. If EPA disapproves in writing of any of Respondent's proposed contractors to conduct the Work, Respondent shall propose a different contractor within fourteen (14) days of receipt of EPA's disapproval.

36. Respondent shall provide a copy of this Settlement Agreement to each contractor and subcontractor approved and retained to perform the Work required by this Settlement Agreement. Respondent shall include in all contracts or subcontracts entered into for Work required under this Settlement Agreement provisions stating that such contractors or subcontractors, including their agents and employees, shall perform activities required by such contracts or subcontracts in compliance with this Settlement Agreement and all applicable laws and regulations. Respondent shall be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Settlement Agreement.

B. Description of Work

37. Respondent shall perform all actions necessary to implement the Work set forth in this paragraph to achieve protection of the water supply at The Four Properties. The actions to be implemented include, but may not be limited to, the following:

- a. evaluation of the current condition of the water supply at The Four Properties and the operating efficiency of existing POET systems installed by EPA to determine whether to install, replace or modify POET systems, or, at Respondent's option, provide public water, to effectively reduce contaminant levels below current drinking water MCLs;
- b. if replacement or reinstallation of the POET systems at The Four Properties is warranted, an evaluation of available treatment methods using either air stripping or carbon adsorption;
- c. after EPA approval of the evaluation above, reinstallation, replacement or modification of the POET systems, or, at Respondent's option, connection to public water at The Four Properties as appropriate;
- d. maintenance of existing, modified, or replaced POET systems at The Four Properties;
- e. such other investigations, studies, and response actions as Respondent may propose and EPA may approve in accordance with this Settlement Agreement, including, but not limited to, the use and maintenance of existing supply wells at one or more of The Four Properties for future groundwater monitoring purposes.

38. Within twenty one (21) days of the Effective Date of this Settlement Agreement, except in the case of paragraph 38.d, Respondent shall submit to EPA for review and approval a detailed Site Operating Plan ("SOP") for the Work in accordance with this Settlement Agreement, CERCLA, the NCP, EPA's relevant guidance documents and other applicable Federal and State laws and regulations. This SOP shall include the following:

- a. Site Work Plan;



- b. Transportation and Disposal Plan;
- c. Site Health and Safety Plan; and
- d. Quality Assurance Project Plan ("QAPP"), which shall include a plan for sampling and analysis and shall be deliverable within thirty five (35) days of the Effective Date.

39. The Site Work Plan shall include a detailed description of how the tasks identified in Paragraph 37 above will be accomplished and at a minimum, address the following:

- a. Submission of recommendations for EPA approval for repair, replacement or modification of existing systems, as well as maintenance of all treatment systems.
- b. Proposed time line for the Work.
- c. Sampling and analysis, preventative maintenance, salt delivery to reduce effects of hard water and replacement of ultraviolet lights, where applicable and as needed.
- d. Proper characterization, staging, handling, sampling and analysis of all materials containing hazardous substances, pollutants or contaminants at the Site.
- e. Procedures for handling and disposing of spent carbon, if any, from the remaining POET systems.
- f. Procedures for the termination of removal operation, monitoring and maintenance of the POET systems, for The Four Properties, by Respondent based upon, among other factors, compliance with applicable drinking water and/or groundwater standards at the property. The obligations of Respondent under this Settlement Agreement (other than record retention and payment of Response Costs) will terminate upon the earlier of: 1) a determination by EPA that federal and state MCLs have been achieved for three (3) consecutive years of quarterly monitoring in the supply wells at all of The Four Properties, followed by three (3) consecutive years of semi-annual monitoring after the shutdown of

each POET system, confirming compliance with MCLs; 2) the supply wells at all of The Four Properties are no longer in use for any purpose (i.e., the public water supply is being used at all of The Four Properties); or 3) the inclusion of such obligations under another settlement between EPA and Respondent.

40. The Transportation and Disposal Plan shall outline procedures for the proper transporting and treating or disposing of all hazardous substances, pollutants and contaminants, hazardous waste and any solid waste generated during the Work. To the extent waste is generated, sampled or analyzed, the plan shall include the identification of the proposed treatment or disposal facilities for all waste streams and include waste profile information, facility acceptance documentation, and analytical characterization of each waste stream. In addition, to the extent possible before any waste is generated, sampled and analyzed, the plan shall include the following information to be determined and documented by Respondent:

- a. the valid Resource Conservation and Recovery Act ("RCRA") transporter and disposal identification numbers for each proposed transporter and treatment or disposal company;
- b. the most recent six-month State or EPA regulatory inspection results of each treatment or disposal facility;
- c. documentation of the current permit status of proposed transporters and treatment or disposal facilities; and
- d. the date of the most recent State or EPA regulatory inspection of each proposed treatment or disposal facility, and any special provisions or conditions attached to the RCRA disposal permits as a result of the most recent inspection.

Respondent shall provide all of the information required in a. - d. above to the EPA On-Scene Coordinator ("OSC") prior to shipping any hazardous waste off the Site. Respondent shall notify EPA of the names and addresses of all off-Site Waste treatment, storage or disposal facilities selected by Respondent to receive Wastes from the Site and shall obtain EPA's approval at least five days prior to off-Site shipment of such Wastes.

After permitted treatment or disposal facilities have been identified, all wastes shall be properly manifested (if applicable) and shipped off-Site via permitted transporters. All final signed manifests, bills of lading and certificates of destruction or disposal shall be provided to the RPM and OSC upon receipt by Respondent.

41. The Site Health and Safety Plan shall ensure the protection of the public health and safety during performance of Work under this Settlement Agreement. This plan shall be prepared in accordance with the "EPA Standard Operating Safety Guide" (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. The plan shall also include contingency planning. Respondent shall incorporate all changes to the plan required by EPA and shall implement the plan during the duration of the removal action. The Site Health and Safety Plan, at a minimum, shall address the following:

- a. Demonstration that all personnel, including subcontractor personnel, have current OSHA certifications where OSHA regulations are applicable; and
- b. Compliance with OSHA requirements for Health and Safety Plans.

If performance of any subsequent phase of the work required by this Settlement Agreement requires alteration of the Health and Safety Plan, Respondent shall submit to EPA for review and comment proposed amendments to the Health and Safety Plan.

42. The QAPP shall contain the following:

- a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA policy and guidance regarding sampling, quality assurance, quality control, data validation, and chain of custody procedures. Respondent shall include a description of how sampling data will be submitted in a manner that is consistent with the Region 2 Electronic Data Deliverable (EDD) format (information available at [www.epa.gov/region02/superfund/medd.htm](http://www.epa.gov/region02/superfund/medd.htm)). Respondent shall incorporate these procedures in accordance with

the Uniform Federal Policy for Implementing Quality Systems ("UFP-QS"), EPA-505-F-03-001, March 2005; Uniform Federal Policy for Quality Assurance Project Plans ("UFP-QAPP"), Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005 or newer; and other guidance documents referenced in the aforementioned guidance documents. Subsequent amendments to the above, upon notification by EPA to Respondent of such amendments, shall apply only to procedures conducted after such notification.

- b. If performance of any subsequent phase of the Work required by this Settlement Agreement requires alteration of the QAPP, Respondent shall submit to EPA for review and approval proposed amendments to the QAPP.
- c. Respondent shall conduct the appropriate level of data verification/validation and provide the specified data deliverables as provided in the EPA-approved QAPP.
- d. The QAPP shall require that any laboratory utilized by Respondent is certified for the matrix/analyses which are to be conducted for any work performed pursuant to this Order, by one of the following accreditation/certification programs: USEPA Contract Laboratory Program ("CLP"), National Environmental Laboratory Accreditation Program ("NELAP"), American Association for Laboratory Accreditation ("A2LA"), or a certification issued by a program conducted by a state, and acceptable to EPA, for the analytic services to be provided. The QAPP shall require the Respondent to submit laboratory certificates from such accreditation programs that are valid at the time samples are analyzed. If a specific analytical service is unavailable from a certified laboratory, EPA may within its discretion, approve Respondent's utilization of a laboratory that is not certified. EPA approval shall be based on Respondent's submittal of a written request, submittal of the laboratory quality assurance plan, and the laboratory's demonstration of capability through the analysis of Performance Evaluation samples for the constituents of concern.

- e. In its contract(s) with laboratories utilized for the analyses of samples, Respondent shall require granting access to USEPA personnel and authorized representatives of the USEPA to the laboratories for the purpose of ensuring the accuracy of laboratory results related to the Site.
- f. For any analytical work performed under this Settlement Agreement, including but not limited to that performed in a fixed laboratory, in a mobile laboratory, or in on-Site screening analyses, Respondent shall submit to EPA, within thirty (30) days after receipt of the analytical results, a "Non-CLP Superfund Analytical Services Tracking System" form with respect to each laboratory utilized during a sampling event. Each such form shall be submitted to the EPA OSC and Remedial Project Manager ("RPM"), and a copy of the form and transmittal letter shall also be sent to:

Regional Sample Control Center Coordinator (RSCC)  
USEPA, Division of Environmental Science &  
Assessment  
MS-215  
2890 Woodbridge Avenue  
Edison, New Jersey 08837.

43. The QAPP shall include detailed procedures, methods and sampling parameters to be implemented to sample and analyze the contaminants found in influent and effluent water and granulated activated carbon ("GAC"), if any, used to filter Site groundwater. Appropriate sampling and analysis methods (e.g., sample frequency, compositing techniques, etc.), as necessary shall be utilized for the proper disposal of potentially contaminated GAC, if any.

44. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing Work under this Settlement Agreement. Respondent shall notify EPA not less than seven (7) days in advance of any sample collection activity or within a shorter period if agreed to by EPA.

45. Upon EPA's request, Respondent shall submit to EPA all laboratory data collected and received by Respondent. Such data shall be in an EPA approved database format.

46. EPA either will approve the SOP, or will require modifications thereto pursuant to Section VIII (Plans and Reports Requiring EPA Approval), below. Upon its approval by EPA, the SOP shall be deemed to be incorporated into and an enforceable part of this Settlement Agreement.

47. Within seven (7) days after EPA's approval of the SOP, Respondent shall commence the Work described in the EPA-approved SOP. Respondent shall fully implement the EPA-approved SOP in accordance with the terms and schedule therein and in accordance with this Settlement Agreement.

48. At the time of completion of all field activities required by this Settlement Agreement, demobilization shall include sampling if deemed necessary by EPA, and proper disposal or decontamination of protective clothing, remaining laboratory samples taken pursuant to this Settlement Agreement, and any equipment or structures constructed to facilitate the cleanup. Respondent shall insure that unused POET equipment or structures are removed.

49. Respondent shall conduct the Work required hereunder in accordance with CERCLA and the NCP, and in addition to guidance documents referenced above, the following guidance documents: EPA Region 2's "Clean and Green Policy" which may be found at <http://epa.gov/region2/superfund/greenremediation/policy.html>, and Guide to Management of Investigation-Derived Wastes (OSWER Publication 9345.3-03FS, January 1992), as they may be amended or modified by EPA.

C. Remedial Project Manager, On-Scene Coordinator, Other Personnel, and Modifications to EPA-Approved SOP

50. All activities required of Respondent under the terms of this Settlement Agreement shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by the Federal government and the State of New York, and all work conducted pursuant to this Settlement Agreement shall be performed in accordance with prevailing professional standards.

51. The current EPA RPM for the Site is: Isabel Rodrigues, New York Remediation Branch, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20<sup>th</sup> Floor, New York, New York, 10007, telephone number 212-637-4248, [rodrigues.isabel@epa.gov](mailto:rodrigues.isabel@epa.gov). EPA will notify Respondent's Project Coordinator if EPA designates a different RPM for this Site.

52. The current EPA OSC for the Site is: Jack Harmon, Removal Action Branch, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 2890 Woodbridge Avenue, Building 205 (MS-211), Edison, New Jersey 08837, telephone number 732-321-4427, [harmon.jack@epa.gov](mailto:harmon.jack@epa.gov). EPA will notify Respondent's Project Coordinator if EPA designates a different OSC for this Site.

53. EPA, including the RPM and the OSC, or their authorized representatives, will conduct oversight of the implementation of this Settlement Agreement. The OSC and RPM shall have the authority vested in an OSC and RPM by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other response action undertaken by EPA or Respondent at the Site consistent with this Settlement Agreement. Absence of the OSC and/or RPM from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC and/or RPM.

54. As appropriate during the course of implementation of the Work required of Respondent pursuant to this Settlement Agreement, Respondent or its consultants or contractors, acting through the Project Coordinator, may confer with EPA concerning the required Work. Based upon new circumstances or new information not in the possession of EPA on the Effective Date of this Settlement Agreement, the Project Coordinator may request, in writing, EPA approval of modification(s) to the EPA-approved SOP. Only modifications approved by EPA in writing shall be deemed effective. Upon approval by EPA, such modifications shall be deemed incorporated into this Settlement Agreement and shall be implemented by Respondent.

#### VIII. PLANS AND REPORTS REQUIRING EPA APPROVAL

55. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to

EPA for approval pursuant to this Settlement Agreement, Respondent shall have fourteen (14) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondent shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondent a written statement to that effect.

56. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Settlement Agreement is disapproved by EPA, even after being resubmitted following Respondent's receipt of EPA's comments on the initial submittal, Respondent shall be deemed to be out of compliance with this Settlement Agreement. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondent to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs of doing so from Respondent. Respondent shall implement any such item(s) as amended or developed by EPA.

57. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Settlement Agreement. EPA may modify those documents and/or perform or require the performance of additional work unilaterally to accomplish the objectives set forth in this Settlement Agreement.

58. All plans, reports and other submittals required to be submitted to EPA pursuant to this Settlement Agreement, upon approval by EPA, shall be deemed to be incorporated into and an enforceable part of this Settlement Agreement.

#### IX. REPORTING AND NOTICE TO EPA

59. Commencing on the tenth day of the month after the Effective Date of this Settlement Agreement, Respondent shall provide monthly progress reports unless less frequent progress reporting is approved by EPA. All progress reports shall fully describe all actions and activities undertaken pursuant to this



Settlement Agreement. Such progress reports shall, among other things: (a) describe the actions taken toward achieving compliance with this Settlement Agreement during the previous week; (b) include all results of sampling and tests and all other data received by Respondent after the most recent progress report submitted to EPA; (c) describe all actions which are scheduled for the next month; (d) provide other information relating to the progress of Work as is customary in the industry; and (e) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays.

60. Respondent shall provide EPA with at least one (1) week advance notice of any change in the schedule.

61. The Final Report referred to in Paragraph 63, below, and other documents submitted by Respondent to EPA which purport to document Respondent's compliance with the terms of this Settlement Agreement shall be signed by a responsible official of Respondent or by the Project Coordinator designated pursuant to Paragraph 30. For purposes of this paragraph, a responsible official is an official who is in charge of a principal business function.

62. The SOP, the Final Report, and other documents required to be submitted to EPA under this Settlement Agreement shall be sent to the following addressees:

1 hard copy and 1 electronic copy to:

U.S. Environmental Protection Agency Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, New York 10007  
Attention: Cayuga County Groundwater Site Remedial Project  
Manager  
Rodrigues.isabel@epa.gov

1 electronic copy to:

U.S. Environmental Protection Agency Region 2  
2890 Woodbridge Avenue  
Building 209 (MS-211)  
Edison, New Jersey 08837

Attention: Cayuga County Groundwater Contamination Site  
On-Scene Coordinator  
harmon.jack@epa.gov

1 electronic copy to:

New York/Caribbean Superfund Branch  
Office of Regional Counsel  
United States Environmental Protection Agency Region II  
290 Broadway, 17th Floor  
New York, New York 10007-1866  
Attention: Attorney for Cayuga County Groundwater  
Contamination Site  
Berns.carol@epa.gov

1 hard copy and 1 electronic copy to:

Kevin Kelly  
New York State Department of Environmental Conservation  
615 Erie Blvd. West  
Syracuse, NY 13204-2400

All notices and other documents will be sent to the Respondent at the following address (in hard copy and by electronic mail):

Paul W. Hare  
General Electric Company  
319 Great Oaks Boulevard  
Albany, NY 12203  
paul.hare@ge.com

63. Within thirty (30) days after completion of the Work required by the SOP, Respondent shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with this Settlement Agreement. The Final Report shall include:

- a. A synopsis of all Work performed under this Settlement Agreement;
- b. A detailed description of all EPA-approved modifications to the SOP which occurred during Respondent's performance of the Work required under this Settlement Agreement;
- c. A listing of quantities and types of materials removed

from the Site or handled on-Site;

- d. A presentation of the analytical results of all sampling and analyses performed and chain of custody records;
- e. Accompanying appendices containing all relevant documentation generated during the Work (e.g. manifests, bills of lading, certificates of destruction and permits;
- f. An accounting of expenses incurred by Respondent in performing the work; and
- g. The following certification signed by a person who supervised or directed the preparation of the Final Report:

"I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information contained in and accompanying this document is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fines and imprisonment for knowing violations."

64. EPA either will approve the Final Report or will require modifications thereto pursuant to Paragraphs 55-58, above.

#### X. OVERSIGHT

65. During the implementation of the requirements of this Settlement Agreement, Respondent and its contractor(s) and subcontractors shall be available for such conferences with EPA and inspections by EPA or its authorized representatives as EPA may determine are necessary to adequately oversee the Work being carried out or to be carried out by Respondent, including inspections at the Site and at laboratories where analytical work is being done hereunder.

66. Respondent and its employees, agents, contractor(s) and consultant(s) shall cooperate with EPA in its efforts to oversee Respondent's implementation of this Settlement Agreement.

## XI. COMMUNITY RELATIONS

67. Respondent shall cooperate with EPA in providing information relating to the Work required hereunder to the public. As requested by EPA, Respondent shall participate in the preparation of all appropriate information disseminated to the public; participate in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site; and provide a suitable location for public meetings, as needed relating to the Work.

## XII. ACCESS TO PROPERTY AND INFORMATION

68. If the Site, any portion thereof, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondent, Respondent shall permit EPA, NYSDEC, and their designated representatives, including, but not limited to, employees, agents, contractor(s), and consultant(s) thereof, to observe the Work carried out pursuant to this Settlement Agreement. Respondent shall at all times permit EPA, NYSDEC, and their designated representatives full access to and freedom of movement at the Site and any other premises where Work under this Settlement Agreement is to be performed for purposes of inspecting or observing Respondent's progress in implementing the requirements of this Settlement Agreement, verifying the information submitted to EPA by Respondent, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Settlement Agreement.

69. In the event that action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain access agreements from the present owners within twenty one (21) days of the Effective Date of this Settlement Agreement for purposes of implementing the requirements of this Settlement Agreement. Such agreements shall provide access not only for Respondent, but also for EPA and its designated representatives or agents, as well as NYSDEC and its designated representatives or agents. Such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities. If such access agreements are not obtained by Respondent within the time period specified herein, Respondent shall immediately notify EPA of its failure to obtain access and

shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondent, may perform those response actions with EPA contractors at the property in question, or may terminate the Settlement Agreement if Respondent cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Respondent shall perform all other activities not requiring access to that property. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

70. Upon request, Respondent shall provide EPA with access to Respondent's records and documentation related to the conditions at the Site, hazardous substances found at or released from the Site, and the actions conducted pursuant to this Settlement Agreement except for those items, if any, subject to the attorney-client or attorney work product privileges. Nothing herein shall preclude Respondent from asserting a business confidentiality claim pursuant to 40 C.F.R. Part 2, Subpart B. All data, information, and records created, maintained, or received by Respondent or its contractor(s) or consultant(s) in connection with implementation of the Work under this Settlement Agreement, including, but not limited to, contractual documents, invoices, receipts, work orders, and disposal records shall, without delay, be made available to EPA upon request, subject to the same privileges specified above in this paragraph. EPA shall be permitted to copy all such documents. Respondent shall submit to EPA upon receipt the results of all sampling or tests and all other technical data generated by Respondent or its contractor(s), or on Respondent's behalf, in connection with the implementation of this Settlement Agreement.

71. Upon request by EPA, Respondent shall provide EPA or its designated representatives with duplicate and/or split samples of any material sampled in connection with the implementation of this Settlement Agreement.

72. Notwithstanding any other provision of this Settlement Agreement, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. RECORD RETENTION, DOCUMENTATION, AVAILABILITY  
OF INFORMATION

73. a. All data, records, photographs and other information created, maintained or received by Respondent or its agents, contractors or consultants in connection with implementation of the Work under this Settlement Agreement, including but not limited to contractual documents, quality assurance memoranda, raw data, field notes, laboratory analytical reports, invoices, receipts, work orders and disposal records, shall, without delay, be made available to EPA on request. Upon request by EPA, Respondent shall provide copies of all such documents and other items. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

b. Upon request by EPA or its designated representatives, Respondent shall provide EPA or its designated representatives with duplicate and/or split samples of any material sampled in connection with the implementation of this Settlement Agreement, or allow EPA or its designated representatives to take such duplicate or split samples.

74. Respondent may assert a claim of business confidentiality under 40 C.F.R. § 2.203, covering part or all of the information submitted to EPA pursuant to the terms of this Settlement Agreement, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to

Respondent. Respondent agrees not to assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

75. In entering into this Settlement Agreement, Respondent waives any objections to any data gathered, generated, or analyzed by EPA or Respondent in the performance or oversight of the Work under this Settlement Agreement that has been verified according to the QAPP required pursuant to this Settlement Agreement. If Respondent objects to any other data relating to this Settlement Agreement which is submitted in a progress report in accordance with Paragraph 59 herein; Respondent shall submit to EPA a report that identifies and explains its objections, describes its views regarding the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within forty-five (45) days of the periodic progress report containing the data.

76. Respondent shall preserve all documents and information relating to Work performed under this Settlement Agreement, or relating to Waste materials found on or released from the Site, for ten (10) years after completion of the Work required by this Settlement Agreement. At the end of the ten (10) year period, Respondent shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondent shall provide EPA with the originals or copies of such documents and information.

#### XIV. OFF-SITE SHIPMENTS

77. Before shipping any hazardous substances and pollutants or contaminants removed from the Site pursuant to this Settlement Agreement for off-Site treatment, storage, or disposal, Respondent shall obtain EPA's determination of acceptability under 40 C.F.R. § 300.440 that the proposed receiving facility is operating in compliance with (a) Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), (b) Section 300.440 of the NCP, (c) the Clean Air Act ("CAA"), 42 U.S.C. § 7401, et seq., (d) RCRA, (e) the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601, et seq., and (f) all other applicable Federal and State requirements. Respondent shall only send hazardous substances, pollutants or contaminants from the Site to an off-Site facility that complies with the requirements of the statutory provisions and regulations cited in the preceding sentence.

78. If hazardous substances from the Site are to be shipped outside of New York, Respondent shall provide prior notification of such Waste shipments in accordance with the EPA Memorandum entitled "Notification of Out-of-State Shipments of Superfund Site Wastes" (OSWER Directive 9330.2-07, September 14, 1989). At least five (5) working days prior to such Waste shipments, Respondent shall notify the environmental agency of the accepting state of the following: (a) the name and location of the facility to which the Wastes are to be shipped; (b) the type and quantity of Waste to be shipped; (c) the expected schedule for the Waste shipments; (d) the method of transportation and name of transporter; and (e) the treatment and/or disposal method of the Waste streams.

#### XV. COMPLIANCE WITH OTHER LAWS

79. All actions required pursuant to this Settlement Agreement shall be performed in accordance with all applicable Federal and State laws and regulations except as provided in CERCLA § 121(e)(1), 42 U.S.C. § 9621(e)(1), and 40 C.F.R. § 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under Federal environmental or State environmental or facility siting laws. (See "Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

80. Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on-Site. Where any portion of the Work requires a Federal or State permit or approval, Respondent shall submit timely applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, nor shall it be construed to be, a permit issued pursuant to any Federal or State statute or regulation.



## XVI. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

81. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, telephone number (800) 424-8802, Respondent shall immediately orally notify the OSC at 732-321-4427 and the National Response Center at (800) 424-8802 of the incident or Site conditions. Respondent shall also submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken, if any, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting requirements of this paragraph are in addition to, not in lieu of, reporting under CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

82. In the event of any action or occurrence arising from or relating to Respondent's performance of the requirements of this Settlement Agreement which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding paragraph. Respondent shall take such action in accordance with applicable provisions of this Settlement Agreement including, but not limited to, the Site Health and Safety Plan. In the event that EPA determines that: (a) the activities performed pursuant to this Settlement Agreement; (b) significant changes in conditions at the Site; or (c) emergency circumstances occurring at the Site pose a threat to human health or the environment, EPA may direct Respondent to stop further implementation of any actions pursuant to this Settlement Agreement or to take other and further actions reasonably necessary to abate the threat.

83. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

under common control with Respondent, including its contractors and subcontractors, that delays the timely performance of any obligation under this Settlement Agreement notwithstanding Respondent's best efforts to avoid the delay. The requirement that Respondent exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (a) as it is occurring; and (b) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any Work to be performed under this Settlement Agreement or the financial difficulty of Respondent to perform such Work.

88. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a force majeure event, Respondent shall notify by telephone the EPA OSC or, in his absence, the Chief of the Removal Action Branch of the Emergency and Remedial Response Division of EPA Region II at 732-321-6658 within forty-eight (48) hours of when Respondent knew or should have known that the event might cause a delay. In addition, Respondent shall notify EPA in writing within seven (7) calendar days after the date when Respondent first become aware or should have become aware of the circumstances which may delay or prevent performance. Such written notice shall be accompanied by all available and pertinent documentation, including third-party correspondence, and shall contain the following: (a) a description of the circumstances, and Respondent's rationale for interpreting such circumstances as being beyond its control (should that be Respondent's claim); (b) the actions (including pertinent dates) that Respondent has taken and/or plan to take to minimize any delay; and (c) the date by which or the time period within which Respondent proposes to complete the delayed activities. Such notification shall not relieve Respondent of any of its obligations under this Settlement Agreement. Respondent's failure to timely and properly notify EPA as required by this paragraph shall constitute a waiver of Respondent's right to claim an event of force majeure. The burden of proving that an event constituting a force majeure has occurred shall rest with Respondent.

89. If EPA determines that a delay in performance of a requirement under this Settlement Agreement is or was

attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Settlement Agreement which are not directly affected by the force majeure. Respondent shall use its best efforts to avoid or minimize any delay or prevention of performance of its obligations under this Settlement Agreement.

#### XIX. DISPUTE RESOLUTION

90. Respondent may invoke the following dispute resolution procedures in the event of a dispute between Respondent and EPA regarding EPA's disapproval of, or required revisions to, the Final Report pursuant to Paragraph 63; a bill sent to Respondent pursuant to Paragraph 84, or a demand for stipulated penalties pursuant to Paragraph 91.

- a. Respondent shall notify the RPM and the OSC, in writing, of its objections according to the timeframes as follows: 1) within fourteen (14) days of receipt by Respondent of a disapproval notice or notice of required revisions to the Final Report pursuant to Paragraph 63; 2) within twenty-one (21) days of receipt by Respondent of a bill for Response Costs pursuant to this Settlement Agreement; or 3) within twenty-one (21) days of receipt by Respondent of a demand for stipulated penalties pursuant to this Settlement Agreement. Respondent's written objections shall define the dispute, state the basis of Respondent's objections, and be sent to EPA by certified mail, return receipt requested, overnight delivery or courier. EPA and Respondent will then have an additional fourteen (14) days, or such further time as may be agreed to by EPA and Respondent, to reach agreement. If an agreement is not reached within that period, Respondent may, within seven (7) days of the conclusion of that period, request a determination on the matter in dispute by the Director of the Emergency and Remedial Response Division, EPA Region 2 (hereinafter, the "ERRD Director"). Such a request shall be made in writing. The ERRD Director will issue a determination on the matter in dispute, which determination is EPA's final decision.

- b. There shall be no judicial review of a final EPA decision under this Dispute Resolution provision. Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute regardless of whether Respondent agrees with the decision. To the extent necessary, all subsequent schedules for Work shall be adjusted to reflect and be consistent with EPA's final decision on the dispute. If Respondent does not agree to perform or do not actually perform the Work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to itself conduct the Work or any portion thereof and seek reimbursement from Respondent of the costs thereof, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.
- c. Respondent shall not invoke the above dispute resolution procedures more than once regarding the same specific issue.
- d. Respondent may contest any Response Costs paid if after receipt of EPA's printout of cost data from its financial management system, Respondent determines that EPA has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP or are outside the definition of Response Costs. Any objection shall specifically identify the contested Response Cost and the basis for objection. For purposes of this subparagraph and subparagraph e. below, Respondent shall not claim that any of the following constitutes an accounting error: (i) EPA's methodology for calculating indirect costs, as set forth at 65 Fed. Reg. 35341-35345 (June 2, 2000); (ii) any actual or provisional indirect cost rates which are set for EPA Region 2 by EPA's Office of the Comptroller (or similar office) based on the methodology referred to in clause (i); (iii) EPA's methodology for calculating contractor annual allocation costs; and (iv) EPA's use of a provisional annual allocation rate for EPA contractor costs if no final annual allocation rate has been established for a given year and contractor at the time that EPA issues a bill for such contractor

costs. If Respondent prevails in the dispute as to some or all of these costs, EPA will treat the costs for which Respondent prevailed as a credit against any other response costs that EPA would be entitled to collect from Respondent either under this Settlement Agreement or otherwise with respect to the Site.

- e. Respondent may contest payment of any Response Costs if it determines that EPA has made an accounting error, or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP or are outside the definition of Response Costs. Such objection shall be made in accordance with this Paragraph. Any such objection shall specifically identify the contested Response Cost and the basis for objection. Respondent shall, within the 30-day period, pay all uncontested Response Costs to EPA in the manner described in Paragraph 85. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New York and remit to that escrow account funds equivalent to the amount of the contested Response Costs. Respondent shall send to the RPM and the OSC a copy of the transmittal letter and check paying the uncontested Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures. Within fifteen (15) days of the resolution of the dispute, Respondent shall remit to EPA, the amount agreed upon by the parties, or, if no agreement is reached, then the amount (if any) directed by the ERRD Director, with accrued interest. The balance of the escrow account funds, if any, will be disbursed to Respondent.
- f. The invocation of dispute resolution procedures under this Paragraph shall not extend, postpone or affect in any way any obligation of Respondent under this

Settlement Agreement not directly in dispute, unless EPA agrees otherwise. In addition, the invocation of dispute resolution procedures under this Paragraph shall not stay any accrual of stipulated penalties unless EPA agrees otherwise; provided, however, that: (a) during the pendency of the dispute resolution process, EPA will not issue a demand for stipulated penalties regarding an obligation that is directly affected by the dispute; (b) after the conclusion of the dispute resolution process under this Paragraph, EPA will not issue a demand for stipulated penalties for noncompliance during the dispute resolution process with an obligation that was directly affected by the dispute if the final resolution of the dispute was one which comports with the position Respondent was taking during the dispute resolution process; and (c) stipulated penalties regarding an obligation that is directly affected by the dispute shall not continue to accrue during the period, if any, beginning on the 8th day after the date that the matter in dispute is fully presented to the ERRD Director and ending when the ERRD Director issues her/his final decision.

#### XX. STIPULATED AND STATUTORY PENALTIES

91. If Respondent fails, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Settlement Agreement, and such failure is not excused under the terms of Paragraphs 87 through 89 above (Force Majeure), Respondent shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below:

- a. For all requirements of this Settlement Agreement, other than the timely provision of progress reports required by Paragraph 59, stipulated penalties shall accrue in the amount of \$1,000 per day, per violation, for the first seven days of noncompliance, \$1,500 per day, per violation, for the 8th through 15th day of noncompliance, \$3,000 per day, per violation, for the 16th through 25th day of noncompliance, and \$7,000 per day, per violation, for the 26th day of noncompliance and beyond.
- b. For the progress reports required by Paragraph 59, stipulated penalties shall accrue in the amount of \$500

per day, per violation, for the first seven days of noncompliance, \$1,000 per day, per violation, for the 8th through 15th day of noncompliance, \$2,000 per day, per violation, for the 16th through 25th day of noncompliance, and \$4,000 per day, per violation, for the 26th day of noncompliance and beyond.

92. Any such penalty shall accrue as of the first day after the applicable deadline has passed and shall continue to accrue until the noncompliance is corrected or EPA notifies Respondent that it has determined that it will perform the tasks for which there is non-compliance. Such penalty shall be due and payable thirty (30) days following receipt of a written demand from EPA. Payment of any such penalty to EPA shall be made via EFT in accordance with the payment procedures in Paragraph 85 above. Respondent shall pay interest on any amounts overdue under this paragraph. Such interest shall begin to accrue on the first day that the respective payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

93. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Settlement Agreement. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Settlement Agreement.

94. Notwithstanding any other provision of this Settlement Agreement, failure of Respondent to comply with any provision of this Settlement Agreement may subject Respondent to civil penalties of up to thirty-seven thousand five hundred dollars (\$37,500) per violation per day, as provided in Sections 109 and 122(1) of CERCLA, 42 U.S.C. §§ 9609 and 9622(1), and the Debt Collection and Improvement Act of 1996 (see Civil Monetary Penalty Inflation Adjustment Rule, 74 Fed. Reg. 626 (January 7, 2009)), unless such failure to comply is excused by EPA under the terms of Paragraphs 87 through 89 above. Respondent may also be subject to punitive damages in an amount at least equal to but not more than three times the amount of any costs incurred by the United States as a result of such failure to

comply with this Settlement Agreement, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Settlement Agreement or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 and 122 of CERCLA, 42 U.S.C. §§ 9606 and 9622.

#### XXI. OTHER CLAIMS

95. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent or Respondent's employees, agents, contractors, or consultants in carrying out any action or activity pursuant to this Settlement Agreement. The United States or EPA shall not be held out as or deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

96. Except as expressly provided in Section XXV (Covenant Not to Sue by EPA), below, nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

97. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

#### XXII. INDEMNIFICATION

98. Respondent agrees to indemnify, save, and hold harmless the United States, its agencies, departments, officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, its employees,



officers, directors, agents, servants, receivers, trustees, successors, assigns, or any other persons acting on behalf of Respondent or under its control, as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Settlement Agreement by Respondent. The United States will give Respondent reasonable notice of any claim against the United States for which the United States intends to seek indemnification from Respondent pursuant to this Section, and will consult with Respondent prior to settling such claim.

99. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including but not limited to, claims on account of construction delays.

100. Further, Respondent agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement.

#### XXIII. INSURANCE

101. At least seven (7) days prior to commencing any Work at the Site, Respondent shall submit to EPA a certification that Respondent or its contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent pursuant to this Settlement Agreement. Respondent shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Settlement Agreement.

#### XXIV. FINANCIAL ASSURANCE

102. EPA has reviewed financial documentation supplied by Respondent in connection with the Dewey Loeffel Superfund Site and is satisfied that through March 31, 2013, Respondent has sufficient financial wherewithal to conduct the Work. By no later than March 31, 2013, Respondent shall reestablish and maintain financial security for the benefit of EPA in an amount no less than the estimated cost of the Work to be performed by Respondent under this Settlement Agreement in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

- a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA;
- c. a trust fund administered by a trustee acceptable in all respects to EPA;
- d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;
- e. a written guarantee to pay for or perform the Work provided by one or more parent companies of Respondent, or by one or more unrelated companies that have a substantial business relationship with Respondent; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or
- f. demonstration of sufficient financial resources to pay for the Work made by Respondent, which shall consist of a demonstration that any such Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

103. If Respondent elects to utilize the forms provided in Paragraphs 102.e. and/or 102.f. and Respondent or guarantors have provided similar demonstration at other RCRA, CERCLA, TSCA, or other federally-regulated sites, the amount for which

Respondent is providing financial assurance at those sites should be added to the estimated cost of the Work for purposes of determining the total dollar amount required to satisfy the requirements of 40 C.F.R. Part 264.143(f).

104. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 102, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

105. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount initially set, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA.

106. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section.

a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. Any claim arising out of the Work, Response Costs, or \$50,000 of Past Response Costs, including any claim under the United States Constitution, the New York State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. Any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work, Response Costs, or \$50,000 of Past Response Costs.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 109(b), (c), and (e)-(g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

112. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

#### XXVIII. CONTRIBUTION PROTECTION AND RIGHTS

113. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work, Response Costs, and \$50,000 of Past Response Costs.

114. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section

113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has resolved its liability to the United States for the Work performed under this Settlement Agreement, for Response Costs, and for \$50,000 of Past Response Costs.

115. Except as provided in Section XXVII (Covenant Not to Sue by Respondent), above, nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action or demands against any persons not parties to this Settlement Agreement for indemnification, contribution or cost recovery. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that provide contribution protection to such persons.

#### XXIX. MODIFICATIONS

116. The OSC or RPM may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its Effective Date the date of the OSC's or RPM's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

117. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC and/or RPM pursuant to Paragraph 116.

118. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

### XXX. TERMINATION AND SATISFACTION

119. Upon a determination by EPA (following its receipt of the Final Report referred to in Paragraph 63, above) that the Work required pursuant to this Settlement Agreement has been fully carried out in accordance with this Settlement Agreement, EPA will so notify Respondent in writing. Such notification shall not affect any continuing obligations of Respondent. If EPA determines that any removal activities have not been completed in accordance with this Settlement Agreement, EPA may so notify Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies in accordance with Section VII of this Settlement Agreement.

### XXXI. SEVERABILITY/INTEGRATION/APPENDICES

120. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondent need not comply with one or more provisions of this Settlement Agreement, Respondent shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or excused by the court's order.

121. This Settlement Agreement and its appendix constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to, and incorporated into, this Settlement Agreement:

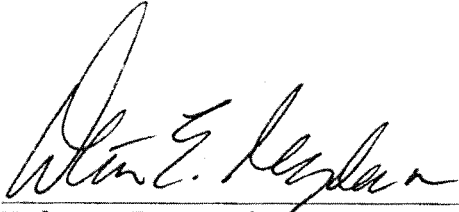
Appendix A - Map of Site

### XXXII. EFFECTIVE DATE

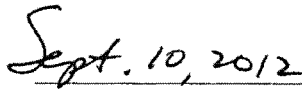
122. This Settlement Agreement shall become effective five (5) days after execution of the Settlement Agreement by EPA. All times for performance of actions or activities required herein will be calculated from said Effective Date.

In the Matter of the Cayuga County Groundwater Contamination  
Site, EPA Index No. CERCLA-02-2012-2023

U.S. ENVIRONMENTAL PROTECTION AGENCY



Walter E. Mugdan  
Director  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency  
Region 2



Date of Issuance






In the Matter of the Cayuga County Groundwater Contamination  
Site, EPA Index No. CERCLA-02-2012-2023

CONSENT

The Respondent named below has had an opportunity to confer with EPA to discuss the terms and the issuance of this Settlement Agreement. The Respondent hereby consents to the issuance of this Settlement Agreement and to its terms. Furthermore, the individual signing this Settlement Agreement on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Settlement Agreement and to bind Respondent.

General Electric Company  
(Name of Respondent)

  
(Signature)

Sept 6, 2012  
(Date)

Thomas H. Hill  
(Printed Name of Signatory)

Associate General Counsel  
(Title of Signatory) Corp. Env. Programs BE



# Cayuga County Groundwater Contamination Site Location

